IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL WASHINGTON,	§	
	§	No. 110, 2011
Defendant Below,	§	
Appellant,	§	Court Below–Superior Court
	§	of the State of Delaware in
v.	§	and for New Castle County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0909018475A
Appellee.	§	

Submitted: July 15, 2011
Decided: October 14, 2011

Before **STEELE,** Chief Justice, **HOLLAND and JACOBS,** Justices.

O R D E R

This 14th day of October 2011, it appears to the Court that:

(1) In November 2010, a Superior Court jury convicted the appellant, Michael Washington, of two counts each of Manslaughter and Possession of a Firearm During the Commission of a Felony in the September 1, 2008 fatal shooting of Leighton Francis and Amin Guy in Wilmington, Delaware. For those convictions, plus a third weapon conviction, Washington was sentenced in February 2011 to a total of eighty-six years at Level V suspended after sixty-four years for descending levels of probation.[1] This is Washington's direct appeal.

[1] The record reflects that a charge of Possession of a Firearm by a Person Prohibited was severed prior to verdict. Washington was subsequently found guilty of that charge by the trial judge.

(2) On appeal, Washington's defense counsel ("Counsel") has filed a brief and a motion to withdraw pursuant to Supreme Court Rule 26(c) ("Rule 26(c)") asserting that there are no arguably appealable issues.[2] Washington, through Counsel, has submitted two issues for the Court's consideration. The State has responded to Washington's issues and has moved to affirm the Superior Court's judgment.

(3) When reviewing a motion to withdraw and an accompanying brief under Rule 26(c), this Court must be satisfied that the defendant's counsel has made a conscientious examination of the record and the law for arguable claims.[3] The Court must also conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[4]

(4) It appears from the record that Francis and Guy were found shot to death on September 1, 2008 (hereinafter "the shooting") in the front seat of a bullet-ridden black Lexus (hereinafter "the vehicle") in the 500 block of E. 10th Street. The first police officer to arrive at the scene found the vehicle stopped in the middle of traffic, still in gear and wedged against another car.

(5) Detective John Ciritella of the Wilmington Police Department (hereinafter "Ciritella") was assigned to investigate the shooting. As the

[2] *See* Del. Supr. Ct. R. 26(c) (governing appeals without merit).
[3] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).
[4] *Id.*

investigation unfolded, Ciritella theorized that the shooting occurred from inside the vehicle as it was leaving the 700 block of E. 10th Street and that the vehicle continued moving until it came to a stop in the 500 block.

(6) Ciritella recovered a significant number of bullets, bullet fragments and/or shell casings, from the interior of the vehicle, the 700 block of E. 10th Street, and the victims' bodies following the medical examiner's autopsies. Ciritella did not, however, recover a weapon that was used in the shooting.

(7) At trial, Ciritella testified that initially and for several months after the shooting, he could not develop a lead on a suspect. Finally, however, in April 2009, Ciritella was advised that an inmate in federal custody, Christopher Waterman, was interested in disclosing information about the shooting that he had allegedly heard from another inmate. The other inmate turned out to be Washington. Similarly, in May 2009 and December 2009, Ciritella learned that inmates William Coleman and Isaiah Fields also wanted to disclose information that another inmate, again Washington, purportedly told each of them about the shooting.

(8) Ciritella conducted individual one-on-one interviews with Waterman, Coleman and Fields. As a result of those interviews, Ciritella learned that between the fall of 2008 and the spring of 2009, Washington allegedly individually told Waterman, Coleman and Fields at different times that he was either in the vehicle during the shooting or that he was the shooter, and that the weapon involved in the

shooting was a "Mac 10," which Ciritella knew was a candidate weapon. Ciritella also learned from Waterman, Coleman and Fields that the shooting was possibly the result of a botched robbery or a dispute over a drug deal, and that the gun had discharged unexpectedly in the vehicle.

(9) Ciritella learned additional information from Coleman about Washington's possible involvement in the shooting, namely that Washington was worried that a resident of the 700 block of E. 10th Street, April Gardner, had witnessed the shooting. Moreover, Fields told Ciritella that he was with Washington in June or July 2008 at 930 Spruce Street, a drug hangout, when the "Mac 10" Washington was holding suddenly went off and sprayed gunfire.

(10) As a result of his interview with Fields, Ciritella obtained a search warrant for 930 Spruce Street and in the ensuing search found a number of bullet holes in the floor and walls from which he recovered three bullets. From his interview with Coleman, Ciritella was able to locate Gardner at her 729 E. 10th Street home. Gardner told Ciritella that she witnessed the events leading to the shooting on September 1, 2008 from the front steps of her home.

(11) At trial, Gardner testified that, prior to the shooting, she was outside sitting on her front steps watching her grandson ride his bicycle when she observed Washington and another male – later identified as Guy – walking down 10th Street. Gardner told the jury that she knew Washington because he had grown up in the neighborhood and had gone to school with her children.

(12) Gardner testified that she observed Washington and his companion approach another man who was sitting in the driver's seat of a vehicle that was parked directly in front of her house. According to Gardner, after the three men conversed briefly, Guy got into the right front passenger seat of the vehicle and Washington got into the right rear passenger seat.

(13) Gardner testified that moments after the two men entered the vehicle the vehicle's windows "erupted." Shocked by the explosion, Gardner said, she immediately "grabbed [her] grandson" and ran to her daughter's house around the corner on Bennett Street where she remained for several hours before returning home. Gardner testified that as she ran from the scene, she could feel shards of glass getting caught in her hair, and that she had "glass all in [her] hair" when she reached her daughter's house. Gardner further testified that Washington came to her home later that evening "to apologize," but that she refused to speak to him.

(14) On September 28, 2009, Washington was charged with two counts of Murder in the First Degree, two counts of Possession of a Firearm During the Commission of a Felony and one count of Possession of a Firearm by a Person Prohibited. Washington went to trial on those charges on October 26, 2010.

(15) At trial, the State's ballistics expert, Delaware State Police Firearms Examiner Carl Rone (hereinafter "Rone"), opined that the strafing of the vehicle's interior was the result of a semi-automatic or automatic weapon discharging more than thirty rounds inside the vehicle from the area of the right rear passenger seat.

Rone further opined that the sixteen bullets and thirty spent shell casings he examined, which were recovered from the vehicle, the victims' bodies, and 930 Spruce Street, all came from the same semi-automatic or automatic weapon.

(16) Washington testified at trial that he visited "Miss April" later in the evening on September 1, 2008, because he was sorry to hear that Leighton and Francis had been shot in front of her house, and that she had witnessed the shooting. Washington also testified that, a few days prior to the shooting, he had a conversation with Leighton and Guy, while in the vehicle, about a gun his cousin wanted to sell. According to Washington, the gun he was helping his cousin sell "hold[s] 30 rounds" and was "the same gun that went off in the house [on] 930 Spruce Street." Washington denied any involvement in the shooting, however, and he testified that at the time of the shooting he was "cooking up some drugs" at 930 Spruce Street.

(17) On November 11, 2010, at the conclusion of the nine-day trial, the jury convicted Washington of two counts of Manslaughter as lesser-included offenses of Murder in the First Degree and two counts of Possession of a Firearm During the Commission of a Felony. The jury acquitted Washington of Attempted Robbery in the First Degree.

(18) In his issues raised for this Court's consideration, Washington claims that he is entitled to a new trial on the basis of insufficient evidence because of two misleading statements that were made at trial. Because Washington's claims of

error could have been raised at trial but were not, this Court has considered the claims for plain error.[5]

> (19) Under the plain error standard of review, the error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process. Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an accused of a substantial right, or which clearly show manifest injustice.[6]

(20) Washington's first claim is that the prosecutor misled the jury in her opening statement when she referred to a cell phone call between Francis and Guy that was not substantiated at trial. The trial transcript reflects the following relevant portion from the prosecutor's opening statement:

> Detective Ciritella talks to some people on the street, and what he finds out is that Amin Guy, who lives at 707 East 10th Street, and got a phone call, got a phone call, and he walks down the street.
>
> The phone records will show that Leighton [Francis] called Guy before 8:30 p.m. September 1st, 2008. Amin left that house, but never came back.[7]

(21) Washington is correct that the prosecutor made a reference in her opening statement to a cell phone call that was never proven at trial. Washington is incorrect, however, that the prosecutor's misstatement was prejudicial.[8] Rather,

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[5] Del. Supr. Ct. R. 8.
[6] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (citations omitted).
[7] Trial tr. at 21 (Oct. 26, 2010).
[8] *See Dailey v. State*, 956 A.2d 1191, 1195 (Del. 2008) ("Only comments that prejudicially affect the 'substantial rights' of the accused compromise the integrity of the verdict and the fairness of

having reviewed the trial transcript, the Court concludes that the prosecutor's reference to a cell phone conversation between Francis and Guy immediately before the shooting was of no apparent consequence to the case.

(22) Washington's second claim is that Rone testified at trial, contrary to a written report, that two bullet fragments found in the 700 block of E. 10th Street came from the same weapon as the other bullets recovered in the investigation. According to Washington, as a result of the alleged error in Rone's testimony, Rone's expert opinion was misleading and baseless.

(23) Washington's second claim is without merit. The record reflects that Rone testified that sixteen intact bullets and thirty spent shell casings were recovered from the vehicle, the victims' bodies, and 930 Spruce Street. It does not appear that Rone testified about bullet fragments that were recovered from the 700 block of E. 10th Street.

(24) Finally, it does not appear, as Washington seems to suggest, that the unproven cell phone call and/or the presence or absence of expert testimony on two bullet fragments had an impact on the sufficiency of the evidence. On a sufficiency of evidence claim, the relevant inquiry is whether, considering the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.[9] In this case, after a thorough review of the Superior Court record, the Court concludes that

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trial." (quoting *Daniels v. State*, 859 A.2d 1008, 1011 (Del. 2004))).

[9] *Dixon v. State*, 567 A.2d 854, 857 (Del. 1989).

there was sufficient evidence supporting the jury's conviction of Washington on two counts each of Manslaughter and Possession of a Firearm During the Commission of a Felony.

(25) The Court concludes that Washington's appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and the law and properly determined that Washington could not raise a meritorious claim on appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Randy J. Holland
Justice